FILED
OCT 1 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976.

No. 76-239.

JAMES B. BAMFORD, Chairman, DAVID SHIREY, STEWART DE TURK, BOARD OF ASSESSMENT APPEAL, COUNTY OF BERKS,

Petitioners,

v.

DONALD F. GARRETT, SHARON B. GARRETT, VERA A. TURPIN,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

OBJECTION OF RESPONDENTS TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF PENNSYLVANIA STATE ASSOCIATION OF COUNTY COMMISSIONERS.

Of Counsel:
KOHN, SAVETT, MARION & GRAF, P. C.,
1214 IVB Building,
1700 Market Street,
Philadelphia, Pennsylvania. 19103
(215) 665-9900

HAROLD E. KOHN,
DONALD L. WEINBERG,
1214 IVB Building,
1700 Market Street,
Philadelphia, Pennsylvania. 19103
Attorneys for Respondents.

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

OBJECTION OF RESPONDENTS TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF PENNSYLVANIA STATE ASSOCIATION OF COUNTY COMMISSIONERS.

Pursuant to Rule 42(3) of this Court, Respondents to the pending Petition for Certiorari herein object to the Motion For Leave To File Brief Amicus Curiae of Pennsylvania State Association of County Commissioners as follows:

1. The instant motion fails to identify "facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties", as required by Rule 42(3) of this Court.

2. Movant is not "the authorized law officer", nor sponsored by such, of any political subdivision of the Commonwealth of Pennsylvania.

3. Movant has failed to reproduce the Pennsylvania statutes which it claims render it a "political subdivision" of the Commonwealth of Pennsylvania; nor is it such.

Political subdivisions of Pennsylvania are themselves defined by statute and are limited thereby:

> "The following words and phrases, when used in any statute finally enacted on or after September 1, 1937, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:
>
> > 'Political subdivision'. Any county, city, borough, incorporated town, township, school district, vocational school district and county institution district."

1 Pa. C. S. A. § 1991.

The only pre-1937 Pennsylvania statute cited by Movant, the Act of May 10, 1913, P. L. 199, 16 P. S. § 7221, was *repealed* by 16 P. S. § 2901, except for Counties of the First Class: [1]

1. Of which there is only one—Philadelphia.

"The following acts and parts of acts and all amendments thereof are hereby repealed to the extent hereinafter specified . . .

"Repealed absolutely except as to first class counties . . .

1913, May 10, P. L. 199 . . ."

The other acts cited are both limited to authorizing associations of "county commissioners, *together with the county solicitor and the chief clerk to the county commissioner.*" (emphasis supplied).

"16 P. S. § 440:

"County officers of each county may organize for themselves a State association as follows:

(1) The county commissioners, together with the county solicitor and the chief clerk to the county commissioners."

"16 P. S. 3432:

"County officers of the county may join with county officers of other counties of the Commonwealth and organize a State association, as follows:

(1) The county commissioners, together with the county solicitor and the chief clerk to the county commissioners;"

An association of County Commissioners is not even authorized by statute. Moreover, it is ridiculous for Movant to assert, without authority, that any such association is a political subdivision of Pennsylvania when the statutory definition of "political subdivision" contains no mention of such an association.

4. This instant motion is part of and the result of a campaign by the Commissioners of Berks County, the county whose racially and economically discriminatory tax assessments are at issue in this suit, to generate and to orchestrate the semblance of widespread and vital interest in this case. See Exhibits hereto as follows:

Exhibit "A": Reading Times, July 28, 1976

Exhibit "B": Reading Times, August 4, 1976

Exhibit "C": Reading Times, August 7, 1976

Exhibit "D": Reading Times, August 13, 1976.

Respectfully submitted,

HAROLD E. KOHN,
DONALD L. WEINBERG,
Attorneys for Respondent.

Of Counsel:
KOHN, SAVETT, MARION & GRAF, P. C.,
1214 IVB Building,
1700 Market Street,
Philadelphia, Pennsylvania. 19103
(215) 665-9900

Reassessment no cure for ills—Bagenstose

7/28/76 RDG. TIMES

In answering a city call for a complete property tax reassessment of Berks County, Donald W. Bagenstose, chairman of the county commissioners, Tuesday declared that a reassessment isn't the answer to the county's tax problems.

Bagenstose further said that the property tax itself is basically unfair and that a more uniform and fair way to tax county residents should be found.

CITING INEQUITIES in assessments for properties in the city and the county, City Council said that it would try to force the county into a reassessment of the entire county.

But Bagenstose said that the time isn't ripe for a reassessment of the county. Citing inflation, Bagenstose said that any reassessment would be out of date before it's reflected in tax notices.

He noted that Lehigh County has recently completed a total reassessment, which has been challanged in the courts by taxpayers as unfair.

"They're in worse shape now than when they started it," Bagenstose commented.

"THERE IS no good assessment plan in my judgment," Bagenstose said. "If you took the three best real estate men in the state, they'd come up with widely different figures for the same property."

He added that reassessments usually provide a smokescreen for local politicians to raise taxes. "Usually in a reassessment, the total assessment figure goes up, which means that the millage should be decreased by an equal amount. But it never is," he explained.

Bagenstose didn't rule out a reassessment in the future, but he said the commissioners want to wait until inflation slows before tackling the $1.5 million job.

HE DECLARED that because of inflation, the county's official assessment ratio of 35 per cent of property value no longer holds true.

"Right now, the county assessment board is assessing new properties at about 16 or 17 per cent of market value, to keep them in line with older properties," he admitted.

Bagenstose said the assessment board continually reassesses properties to keep pace with changing property values.

He invited the city to submit a list of assessment inequities and promised that it would be reviewed by the assessment board.

Reading may join tax suit

(Continued from Page 23)

sessment Board for alleged discrimination in setting assessments.

The county is appealing a U. S. Circuit Court of Appeals ruling last month in a class-action case by the Garretts and the Turpin woman.

THEY CLAIM they reside in over-assessed areas, heavily populated by blacks in homes that are assessed higher than homes in higher income wards of the city.

They cited a 1971 study which said properties with a value of $4,000 to $6,000 market value were being taxed at 31 per cent while $15,000 homes were being taxed at only 22 per cent.

The U. S. Circuit Court of Appeals reversed a federal court's dismissal of the class action suit against the assessment board and the commissioners will appeal it to the Supreme Court.

MRS. MILLER, finance director, said, "Other communities picked up enough in reassessments to make it pay off. We're assessed heavy now, especially the people who can't afford it."

She claimed, "If we get equal assessment, our millage would go down."

Mayor Joseph P. Kurminski said the city "has been asking and pleading with them (commissioners) for years for a reassessment."

Mrs. Miller noted that the last complete assessment of the city was in 1928, although there was an attempt at one in 1961.

City to join in tax suit?

By J. EARL RUTHARDT
Staff Writer

City Council decided Tuesday to ask the city solicitor's staff if the city should join an upcoming test case in the U.S. Supreme Court involving property assessments.

The general tone of discussion at Tuesday's precouncil session was that the county's assessments of city properties are unfair and riddled with inequities.

"THE HIGHER the market value, the smaller the percentage of assessment," said Councilwoman Karen A. Miller, who started discussion on assessments.

She said she spent some time in the Berks County Courthouse going over assessment records. Among examples of what she termed unfairness was a $112,000 city property assessed at $40,000. She said most new homes are assessed at 50 per cent of their value "while the old row homes are assessed at 80 to 100 per cent.

"It hits the little guy the hardest."

Administrations at City Hall have griped for years about alleged unfair assessments.

IF THE county commissioners would agree to reassess the city and county, Council would forget about the idea of becoming a party to the test case.

The suit was filed by Sharon B. and the Rev. Donald F. Garrett, 313 S. 6th St., and Vera A. Turpin, 444 S. 7th St., against the Berks County As-

(Turn to Page 24, Col. 1)

EXHIBIT "A"

Reading Times

WEDNESDAY, AUGUST 4, 1976 23

Assessment blasted

Commissioners rip tax plan

By JOSEPH N. FARRELL
Staff Writer

In two-part harmony, County Commissioners Donald W. Bagenstose and Vernon K. Shaffer sang out their objections Tuesday to the city's call for a complete real estate reassessment of the county.

Commissioner Anthony J. Carabello refused to join in the refrain, complaining later that the matter wasn't officially before the commissioners because they've not been formally asked for a reassessment by the city.

"THEY WILL, they will," Bagenstose noted.

Shaffer, noting that the city has threatened to join a class action suit in federal court which seeks to force the commissioners into a reassessment, declared, "Even if the U.S. Supreme Court rules against us, the federal marshals will have to haul me to jail, because I'll never vote for a reassessment, and I don't believe any federal court has the power to order us to do it."

In the commissioners' regular meeting, Bagenstose issued a public broadside against a reassessment. He declared that even the best assessment procedures are bad, and that the State Legislature is considering eliminating real estate taxes in favor of an increased income tax.

He added that in cases he knows of, expert real estate appraisers can't agree on the value of a property, and he stated that in a reassessment, "the substantial majority of taxpayers will be paying more taxes."

THE COST of a reassessment alone would be equal to 4.25 mills of county tax, he pointed out.

Bagenstose said the county is upgrading its assessment board, and that the board is continually reassessing properties throughout the city and the county.

If a reassessment ever came to a vote, Bagenstose said he would vote "No, no, no."

Shaffer chorused that any assessment operation is unfair.

"I DON'T think that if God Almighty and his Disciples came down and worked on the assessment board they could please everybody," Shaffer said.

When Carabello's turn came, he said, "I move for a meeting of the salary board," the next item on the agenda.

Later, Bagenstose said the county would send observers to a hearing of the State Senate Finance Committee in Allentown Aug. 16.

The finance committee is investigating the reassessment firm of Cole-Layer-Trumble of Dayton, Ohio, and Philadelphia, the firm which handles most of the reassessments in Pennsylvania, and the firm which just finished the controversial Lehigh County reassessment.

THE COMMITTEE is looking into charges that the firm gives favorable treatment to political and business interests, and reassesses many properties without visiting them.

In other action, the commissioners agreed to assume 25 per cent of the electric and maintenance costs for lighting the intersections of the westward extension of the Warren Street Bypass with the Shillington Road and Lancaster Pike.

Under the proposal, Cumru and Spring townships would assume another 25 per cent of the costs, with the state absorbing the rest.

However, the commissioners noted that nobody knows if there will be enough money to construct the lights in the first place.

EXHIBIT "B"

BEST COPY AVAILABLE

RECEIVED AUG 11 1976

Berks to ask for backing in lawsuit

By JOSEPH N. FARRELL
Staff Writer

Berks County's commissioners will be looking for hard support from other counties on a Berks assessment suit now before the U.S. Supreme Court while they attend the state county commissioners' convention next week in Pittsburgh.

Commissioners Donald W. Bagenstose and Anthony J. Carabello will attend, and on Monday, the county will make a pitch for support in the court fight from the other 66 counties.

BAGENSTOSE SAID that Berks is expecting more than vocal backing. "We expect other counties to help pay for the legal costs of the suit. It's a test case which will affect every county in the state and probably every county in the nation," he explained.

Bagenstose estimated that the legal costs could run $20,000 to $25,000, and he said that in the past, counties have banded together to share legal costs in test cases which affected all the counties.

The suit in question was brought by the Rev. and Mrs. Donald F. Garrett of 313 S. 6th St. and Mrs. Vera A. Turpin of 444 S. 7th St. The Rev. Mr. Garrett is head of the Southwest Christian Ministry.

THE CLASS action suit charges that the Berks County Board of Assessments discriminates against inner city minorities and poor by assessing inner city properties at a higher percentage of market value than homes in more affluent neighborhoods.

In May 1975, Federal Judge E. Mac Troutman in Reading dismissed the action, contending that the Garretts and Mrs. Turpin and other affected property owners could appeal to the assessment board, and if that failed, to the state courts.

But in June, the U.S. Circuit Court of Appeals upset Judge Troutman's ruling and ordered the judge to hold hearings into the charges.

That month, the county commissioners decided to appeal the case to the U.S. Supreme Court.

THE COMMISSIONERS, fearing that the suit could end in a federal court order to reassess the entire county, ordered the county's legal

(Turn to Page 15, Col. 8)

Reading Times
SATURDAY 11
AUGUST 7, 1976

Backing is sought by Berks

(Continued from Page 11)

advisers to hire the best available legal help to prepare the case for the Supreme Court.

Bagenstose stated the county's position: "Basically, we feel that the federal courts do not have the right to interfere in assessments on a county level."

In the last two weeks, the assessment issue has broadened into a battle between the commissioners and City Council.

City Council wants a reassessment of the entire county, charging that city properties are over assessed, and some city officials have threatened to join in the federal suit.

ON THE other side, Bagenstose and Commissioner Vernon K. Shaffer, who make up a majority on the commission, stated that they never will vote for a reassessment, charging that a general reassessment would mean a tax increase for most county residents, and would cost in the area of $2 million.

Bagenstose further stated that property taxes are always unfair, and he called for a broad-based tax such as an income tax to replace property taxes.

While the commissioners share their assessment woes with other county officials in Pittsburgh, there will be no regular Tuesday meeting of the Berks county commissioners.

EXHIBIT "C"

Pa. commissioners will back Berks

8/13/76

Special to the Times

PITTSBURGH—The state convention of county commissioners voted unanimously here Thursday to support Berks County in a Berks assessment test case now before the U.S. Supreme Court.

"We're very happy to have the full support of all the counties," Berks Commissioner Donald W. Bagenstose said.

"I WAS shaking when they got to our resolution," he confided. "They really had fought over some others and knocked some of them down, but ours passed as smooth as butter, without dissent."

The state commissioners association resolved to back Berks by filing a brief as a friend of the court.

"I imagine they'll have to hire an expert lawyer to prepare the brief, and that might cost $1,000 or $2,000, which the association will pay," Bagenstose said.

Under the arrangement, Berks still bears the brunt of fighting the case, and county officials estimate the cost between $20,000 and $25,000.

THE BERKS contingent had journeyed to this week's commissioners' convention with the idea of asking the other 66 counties in the state to help foot that big legal bill.

However, that idea was temporarily shelved when Berks officials found that many counties did not understand the Berks case and its implications, and that it could

(Turn to Page 30, Col. 1)

Pa. body to back county

(Continued from Page 21)

take as much as two years to get all the counties together in contributing to the legal defense fund.

"We felt it was better getting this kind of support first before we asked for financial help," Bagenstose explained.

As for reviving the pitch for financial help, Bagenstose said, "we'll have to weigh that out and decide later."

THE CASE before the Supreme Court is a Berks challenge of the authority of federal courts to interfere in county assessment matters.

The challenge stems from a class action suit by Reading taxpayers charging that the Berks assessment board discriminates against inner-city poor and minorities by assessing their homes at a greater percentage of market value than homes in more affluent neighborhoods.

Bagenstose and other Berks officials have been telling those from other counties all week that the Berks case could have implications in every county in the state, that if federal courts can rule assessments unfair and order a reassessment in Berks, they can do it in every other county, too.

"We worked hard on this all week, and I guess it paid off," Bagenstose said after the resolution of support passed.

EXHIBIT "D"

BEST COPY AVAILABLE